



Australian Government

A NEW APPROACH TO THE FAMILY LAW SYSTEM

IMPLEMENTATION OF REFORMS

DISCUSSION PAPER

10 November 2004

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Or by email to: consultation@ag.gov.au

The deadline for comments is: 14 January 2005

INTRODUCTION

In 2003 the House of Representatives Standing Committee on Family and Community Affairs conducted a wide-ranging inquiry into child custody arrangements in the event of family separation. Many Australian families are affected directly or indirectly by conflict, separation and divorce and this is a significant community issue. This was reflected in the 1700 submissions received by the Committee. The Committee's report, *Every Picture Tells A Story*, tabled on 29 December 2003, had a strong focus on the importance of reducing conflict between separated parents and on separated fathers having greater involvement with their children. It emphasised the need for practical steps to reduce parenting disputes.

On 29 July 2004, the Prime Minister released a statement responding to the Committee's report and proposing major reforms to the family law system. (A copy is in Appendix A on pages 19-22). The statement emphasised the need to provide families with better ways to resolve relationship disputes and to reduce the emotional costs to families and children of conflict and separation. The statement also stressed the importance of providing assistance to families to avoid separation by ensuring they have opportunities for pre-marriage education and help in dealing with relationship difficulties along the way.

The reforms outlined by the Prime Minister will mean the most significant changes to the family law system since 1975. The reforms focus on families and their needs before, during and after separation and provide ways of resolving conflict without going down the adversarial path. A new network of Family Relationship Centres will help families to develop parenting plans and resolve disputes as early as possible after separation. Changes to the law will promote the objective of both parents having a meaningful role in their children's lives. Shared parental responsibility will be the starting point in most cases. With some exceptions, parents will have to try to resolve their disputes before they can take a parenting matter to court. The establishment of the Family Relationship Centres and expansion of other counselling, mediation and similar services will enable many more families to reach agreement in a non-adversarial and cost effective way.

For those families who do need to go to court, less adversarial court processes and a new combined registry for the Family Court and Federal Magistrates Court will make the process easier to navigate and less traumatic.

These reforms recognise that many families need help to develop practical ways of dealing with parenting issues after separation but that most do not need to go to court. They also recognise that the earlier an agreement can be reached that includes both parents in the lives of their children, the more likely it is that the children will continue to have a meaningful relationship with both parents, particularly their fathers. The reforms are also mindful of the need to protect children from violence or abuse. Screening for such issues will be an important part of the new system.

In proposing these major reforms, the Government is committed to improving outcomes for families and ensuring that the focus is on the best interests of the children involved. However, such far-reaching changes need to be implemented carefully and through consultation with the community. This discussion paper has been released as part of that consultation.

The Government wants to hear your views on the proposed changes and how they can be implemented most effectively.

A NEW SYSTEM

The Government proposes to establish 65 Family Relationship Centres across the country to help parents agree on parenting arrangements after separation. This new network of services will be established as a visible entry point to the family law system, providing a range of information, advice and dispute resolution services.

Like the Job Network, the Family Relationship Centres will be run by community-based organisations. Each Family Relationship Centre will provide similar services across the country. They will be nationally badged - that is they will have the same name and logo - and will provide a similar range of information materials and advice. They will also need to meet consistent professional standards.

The Family Relationship Centres will offer practical, early assistance which will be available to all separating parents and their families. Through the new centres, parents will be able to access dispute resolution at an early stage in their separation, before conflict has escalated and disputes have become entrenched.

The new Family Relationship Centres will be focused on engaging with both parents to resolve disputes about their children. It is proposed that both parents would be able to get individual advice and assistance as well as joint sessions with a parenting adviser to help them reach agreement on how to share parental responsibility after separation.

The centres will encourage fathers to maintain a substantial role in their children's lives immediately following a relationship breakdown. Research has shown that, in a majority of cases, child custody arrangements put in place immediately following separation are still in place some years later.¹

While it will not be compulsory to use the Family Relationship Centres, separating parents will be strongly encouraged to do so as early as possible in the separation. As well as a community education campaign (see page 17), doctors, child care centres, lawyers, schools and agencies such as Centrelink and the Child Support Agency, will be asked to refer people to the centres as a first step in dealing with separation. The Child Support Taskforce, recently established to re-evaluate the child support scheme (see page 17) will consider whether there is scope for the child support scheme to encourage couples to access the services of the Centres.

The new Family Relationship Centres will overcome the limitations associated with the Committee's Families Tribunal proposal. The Tribunal would have provided an alternative to the courts for some parenting disputes, offering conciliation and less adversarial decision making processes. However it would have had power to make decisions in only a relatively small proportion of cases and there would have been a right of appeal to the courts. The proposed Family Relationship Centres will help parents resolve their disputes at a much earlier stage in the separation.

The specific help the Family Relationship Centres could provide is outlined in more detail below. To be effective, they would be supported by and be the gateway to a range of other relationship support services designed to provide more specialist help needed by many families to deal with conflict or reach agreement. Some parents will need counselling to reduce the emotional impact of

¹ Qu, Lixia (2004) 'Children's living arrangement after parental separation' in The Australian Institute of Family Studies *Family Matters* No.67 (Autumn)

the separation and enable them to focus on the needs of their children before they can reach agreement. Others will need more intensive or longer term conflict resolution programs. To ensure these support services are available for families experiencing separation, the Government proposes to increase the resources of existing services and to establish services in new locations to meet the needs of families.

What are the support services needed by families going through separation?

Apart from doctors, child care centres, lawyers and schools, who else in the community can help refer separating parents to Family Relationship Centres?

Parenting plans

A primary aim of the new system will be to encourage and assist parents to reach agreement on parenting arrangements after separation and to develop workable parenting plans setting out that agreement.

A parenting plan sets out the agreement between parents as to how they will manage their relationship in the future as far as that relates to their children. Setting out the agreement in a plan helps minimise misunderstandings and provides clarity for the family across a range of issues. The plan can contain anything that the parents think is relevant to them such as:

- who a child is to live with
- the time a child might spend with the other parent
- the time a child might spend with other people such as grandparents
- how parents will share parental responsibility
- maintenance
- how hand-over will be managed
- holiday arrangements, and
- ways of resolving any future disputes.

Under the Government's proposal, the Family Relationship Centres would be the primary source of help and encouragement in developing a parenting plan. They would provide checklists on what parents could consider putting in a parenting plan. The centres could even provide templates for parents to use as a format for their own plans. The Government also proposes to amend the *Family Law Act 1975* to provide more guidance on the sort of things that might be included.² It is also proposed to change the Family Law Act to require other service providers, such as counsellors and mediators who assist people following separation, to provide information about developing a parenting plan and either help them to develop one or tell them where they can get that help. To help ensure consistency of the message, written material would be available to these professionals about parenting plans and about what they need to tell parents.

² There is already some guidance in the Family Law Act but this will be expanded to make it more useful.

The new system would emphasise resolving parenting disputes in a non-adversarial way and help parents reach agreements without the need for a lawyer. People would still be able to use lawyers but, like mediators and counsellors, lawyers would be required to provide information to separating parents about developing a parenting plan and either assist them to do so or tell them where they can get assistance.³

To encourage sharing of parenting time, the Government also proposes to amend the Family Law Act to require advisers (such as lawyers or counsellors) who are helping parents develop a parenting plan to raise with parents the possibility of considering equal parenting time as a starting point.

Parenting plans will usually be adjusted from time to time as circumstances and children's needs change and parents agree on different arrangements. For this reason it is not proposed to require parents to lodge parenting plans with the courts although clearly they will be important documents. The Government proposes to change the Family Law Act to require judges and magistrates to take them into account if parents subsequently end up in court over a parenting issue. The court would still have to make a decision that is in the best interests of the child but would be required to take into account the most recent agreement the parties reached on how to manage their separation.

At the moment, where parents do want to give their agreement the legal force of a court order, they are able to apply for a consent order from the court. (A consent order is one the court can make without any hearing because both parents have agreed to it beforehand.) This will continue under the new system.

What other ways could be used to encourage parents to develop parenting plans as the basis for their parenting arrangements after separation?

Information and referral

The Family Relationship Centres will provide information relevant to the local region, such as the services locally available and how to access them. It is expected that the centres would develop relationships with other agencies in the area, both government and non-government, so that they are able to provide accurate information and refer people appropriately. The centres would also provide nationally consistent information about separation, parenting plans and the family law system as a whole.

Families going through separation have to deal with a range of issues, not just the separation itself. The Family Relationship Centres would have a range of written information available about related issues such as housing, income support, child support, family violence, child abuse, legal aid, crisis counselling and other relevant services.

Group information sessions

It is proposed that the Family Relationship Centres would run regular group information sessions for separating parents. These free information sessions could cover topics such as the family law system, the impact of continuing conflict on children, the merits of parenting plans and of reaching agreement where possible rather than going to court. Practical issues could also be discussed, such

³ Many family lawyers already encourage their clients to reach agreement and to use dispute resolution processes rather than use the courts. The establishment of the Family Relationship Centres and increased access to other dispute resolution services would give lawyers more options when encouraging parents not to go down the adversarial path.

as the need for flexibility in parenting plans to allow for changing circumstances and the needs of children at different ages. There could also be specifically targeted information sessions for men or for specific groups in the community.

Individual interviews with a parenting adviser

For some parents, the group information sessions and/or written information would be enough for them to be able to agree on arrangements for their children and prepare a parenting plan. Others would need more help. It is proposed that parenting advisers would be able to provide free one-on-one advice sessions with individual family members. The parenting adviser would be able to assess the circumstances of that family's separation and identify assistance the individual or the family needs. They could provide a link to other relevant services or agencies, such as Centrelink or local housing authorities and even assist the person to access what they need by making appointments or helping with application forms. They could also help them contact relevant support groups such as those for victims of violence or groups for men or women going through separation.

An important role of the parenting adviser would be to discuss options relating to parenting arrangements and talk about developing a parenting plan. A similar individual interview would be offered to the other parent. This free service should also be available to other family members affected by the separation, such as grandparents.

Parenting advisers would not be providing legal or financial advice. Where people need such advice (for example where the dispute is over property), the parenting adviser would suggest that they seek it separately, through other services or practitioners.

Joint sessions

Where there are no safety issues or other reasons making a joint session inappropriate (see '*Screening*' below), separating parents would be offered the opportunity of joint sessions with a parenting adviser. The aim of the joint sessions would be to discuss the needs and interests of their children, identify issues on which the parents disagree, attempt to resolve any disputes and develop an agreed parenting plan.

The parenting adviser would use their professional expertise to assess the most appropriate approach to the joint sessions. For example, where there is little or no conflict, the sessions could concentrate on drafting a parenting plan. Where there is conflict, the adviser could use dispute resolution techniques to reduce the conflict, focus the parents on the needs of their children and help them agree on parenting arrangements. In all cases the aim would be the development of a suitable parenting plan.

Up to three hours worth of joint sessions with a parenting adviser would be free. (That could be one three hour session or two or three shorter sessions.) Where parents need more joint sessions, they could be given the option of continuing with the same parenting adviser (but paying a fee if they can afford to do so) or being referred to another service in the area that suits their particular needs.

Have you any comments on the proposed information, advice and dispute resolution services to be provided by the Family Relationship Centres?

What are the priority services they should be providing?

Role of lawyers at Family Relationship Centres

To help prevent joint sessions with a parenting adviser becoming adversarial, it is proposed that lawyers not be present during those sessions. Parents would still be able to consult a lawyer if they wished, but the lawyer would not be part of the process at the Family Relationship Centres. It is envisaged that a support person or companion could be present if the parenting adviser agrees.

Screening

People who have been the victims of violence should not be required to have contact with the perpetrator of that violence. Similarly, children should not be forced to have contact with an abusive parent. An important role of the Family Relationship Centres will be to identify cases involving family violence or child abuse issues. As parents can be reluctant to disclose such issues, the parenting advisers will need to be trained to ensure they have skills in identifying them. Where such issues are identified, the parenting adviser will advise the client of relevant support services and make appointments with such a service if the client wishes. The parenting adviser will inform the client that they do not have to participate in a dispute resolution process, but instead can use the court process if they wish. If the person needs an immediate apprehended violence order, the parenting adviser can refer them to the relevant State or Territory agency (police or local court) or to a community legal centre or similar service for assistance. Where the client is the perpetrator rather than the victim of violence, it is envisaged that the parenting adviser would still advise them of relevant services or programs that can help address their behaviour and make appointments for the client if they agree.

There may be concern about people making false accusations of violence or child abuse. If such allegations are made falsely and a parenting matter ends up in court as a result, the court will be able to make costs orders against the person who made the false allegations (see page 12).

What training needs to be provided to help parenting advisers identify violence or child abuse?

Supporting contact between parents and children

Early help from the centres in resolving conflict and developing parenting plans should increase the likelihood of both parents maintaining a role in their children's lives after separation. Changes to the law will be important as well (see page 10). However, for a range of reasons some parents lose contact with their child, either permanently or while issues are fought out in the courts. Once contact is lost, it can be difficult to re-establish the relationship with the child.

The Family Relationship Centres would play a role in helping parents re-establish contact with their children through the advice and dispute resolution they would provide. They will also be able to refer parents to parenting skills training where lack of skills in looking after children may be a barrier to contact. However, in some families the barrier to contact is the conflict between the parents. The House of Representatives Committee identified the existing Contact Orders Program as particularly successful in working with families entrenched in high levels of conflict, helping

them move to more co-operative parenting. The Contact Orders Program uses a range of methods to help parents understand the effect the conflict is having on their children and to learn to deal with each other in a cooperative way for the sake of their children. Many of the families assisted by the program have been ordered to attend by the courts as a result of multiple breaches of court orders. Eighty-eight per cent of clients interviewed when the program was evaluated reported achieving a positive outcome from participating in the program.

The Committee strongly urged the Government to make the Contact Orders Program available across the country as a matter of priority.

The Government proposes to do so and, where possible, make the program accessible earlier in the separation process. Where a Family Relationship Centre identifies entrenched conflict, particularly where it has caused contact to break down, and concludes that the family needs this more intensive program, the parenting adviser would be able to refer the family direct to the program rather than attempt to resolve the dispute at the Family Relationship Centre.

Children's Contact Services provide another form of support designed to assist children to establish or maintain contact with their parents. There are times where contact with both parents would be in the best interests of the child but the handover from one parent to the other is a flash point for conflict or there are safety concerns. Children's Contact Services provide a safe, neutral environment for children where parents can drop them off or pick them up without seeing the other parent. Children's Contact Services also provide supervised contact where that is needed.

In line with the Committee's recommendation, the Government proposes to increase the capacity of existing Children's Contact Services and establish new ones in metropolitan and regional locations across Australia.

When agreements break down

A major cause of conflict between separating parents is the breach of parenting agreements or court orders. The current process of seeking enforcement orders from the courts escalates the conflict and often does not resolve the problem. The Government is proposing a new approach to helping parents deal with such breaches, using the Family Relationship Centres and the Contact Orders Program.

Under the new approach, parents would be encouraged to contact a Family Relationship Centre over a breach of an agreement or order to try to resolve the problem outside the courts. A parenting adviser would contact the other parent and, where practical, set up a meeting with both parents to try to resolve the issue. (In some cases the level of conflict might mean the adviser would need to talk to the parents separately.) The parenting adviser could use dispute resolution techniques or, where entrenched conflict makes resolution within the centre unlikely, could refer the family to the Contact Orders Program or another specialist program. Making the Contact Orders Program more accessible will be crucial to this approach. While parents cannot be ordered to use the program (only a court can do that), they would be strongly encouraged to do so as a better way of dealing with the issues than going to court.

The Government also proposes to change the Family Law Act to strengthen the enforcement provisions (see page 13).

Are there other things the parenting adviser could do when agreements break down?

Preventing separation

The Family Relationship Centres would not just be for separating parents. They would also have a role in promoting healthy family relationships and preventing relationship breakdown.

They would provide information about pre-marriage education services and encourage couples to use such services. Pre-marriage education programs are designed to help couples learn how to enhance their relationships and develop skills to anticipate and deal with potential relationship difficulties. The Government directly subsidises pre-marriage education services and in the past has trialled providing couples with vouchers for pre-marriage education. The Government proposes to increase resources for pre-marriage education programs so that more couples have an opportunity to develop these skills but needs to identify the most effective way of providing those resources.

The Family Relationship Centres would also be a source of information and referral to services such as Family Relationships Skills Training that can help to prevent family breakdown. Family Relationships Skills Training assists men and women to develop skills to foster positive, stable relationships with their partner or family. The Government proposes to increase resources for early intervention services such as this. Some of these services could be provided on the same premises as the Family Relationship Centres. The Family Relationship Centres would also be able to refer people to other services that can help them deal with issues threatening their relationship, such as debt or addiction to alcohol or drugs.

What is the most effective way of supporting pre-marriage education?
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What services are needed to help prevent family separation?

National advice line and website

To support the Family Relationship Centres and provide a service to people who are unable to access a centre, the Government proposes to establish a free national Family Relationship Advice Line and website. Callers to the advice line would be able to obtain a wide range of information and speak to parenting advisers about practical issues relating to separation, including advice on developing parenting plans.

Implementing the new system

The Government proposes to establish the Family Relationship Centres in metropolitan and major regional centres around Australia over three years. Fifteen would be established in the first year that funding is available. An implementation review would be conducted after that first year.

The Government envisages that they would be run by community-based organisations with strong expertise in providing services for families. Candidates for running the centres are likely to include existing service providers under the Family Relationships Services Program, given their experience in this field, but the Government would want to ensure that selection of providers is open and fair and so proposes to use an open tender process. Some centres may be co-located with services run by the same organisation but they would also need to refer people to other relevant services in the area. The Government will also encourage collaborative tenders from organisations to run a centre jointly.

The new system would need to be able to provide services that meet the needs of geographically isolated families, Indigenous families and families from culturally and linguistically diverse parts of the community.

How can the Family Relationship Centres best meet the needs of families across Australia?

What methods of outreach would be most effective for these sorts of services?

Help for grandparents

Grandparents play an essential role in children's lives but can feel cut off and helpless when families separate. While the Family Law Act does provide for grandparents to seek orders relating to their grandchildren (including orders concerning contact and residence) many grandparents are not aware they can do so or simply want to have a role in their grandchildren's lives without taking the matter to court. The Government proposes to change the Family Law Act to reinforce the role of grandparents. In particular, the Government proposes to introduce an amendment to explicitly provide that time with grandparents be considered by the court when determining what is in the best interest of a child. The Family Law Act would also be changed to make it clear that a parenting plan can deal with how a child is to have a continuing relationship with their grandparents.

Through the proposed community education campaign (see page 17), grandparents would be invited to use the Family Relationship Centres, dispute resolution services and the new national advice line to obtain information and assistance. The Government also proposes additional legal aid resources in recognition of the increased demand as a result of more grandparents exercising their rights.

Many grandparents have responsibility for caring for their grandchildren when the parents are unable to do so. Grandparents caring for children already have access to family income support payments. The Australian Government and all State and Territory Governments, through the Council of Australian Governments (COAG), have agreed to work on developing a more coordinated approach to supporting grandparents who are providing full-time care to their grandchildren. COAG has commissioned the Community and Disability Services Ministers Conference to report to COAG on the nature and extent of the needs of grandparent carers and what measures could be taken to address them.

What more can be done to make it easier for grandparents to have an on-going relationship with their grandchildren after separation?

CHANGES TO THE LAW TO SUPPORT SHARED PARENTING

The Government supports shared parenting and wants people to reach agreements about parenting rather than use the courts. Where a matter does need to go to court, the Government wants to ensure that the option of shared parenting is considered by judges and magistrates when making parenting orders.

As recommended by the Committee, the Government proposes to amend section 60B of the Family Law Act to make one of the objects of the Act:

to ensure that parents are given the opportunity for a meaningful involvement in their children's lives to the maximum extent consistent with the best interests of the child.

The Government also proposes to strengthen the underlying principles, already in the Family Law Act, of children having a right to be known and cared for by both parents and a right of contact on a regular basis with both their parents and other people significant to them. The new provisions would refer to the right of children to spend time on a regular basis, and communicate on a regular basis, with both parents (and other people significant to their care, welfare and development). This right would always be subject to the best interests of the child. As recommended by the Committee, the proposed provision would also refer to the need to protect children from physical or psychological harm.

Equal shared parental responsibility

As indicated above, where parents agree, parenting plans can set out how parents will share parental responsibility. Equal shared parental responsibility means parents share the key decisions in a child's life, regardless of how much time the child spends with each parent. These include decisions about a child's education, their religion, issues concerning their health and where they live. For example, decisions about which school a child should attend would be a decision that should be made jointly.

As recommended by the Committee, the Government proposes to make equal shared parental responsibility the starting point under the Family Law Act by making it a rebuttable presumption. A rebuttable presumption means that the judge or magistrate will start with the presumption that there will be equal shared parental responsibility but one or both parties can argue for a different decision. The best interests of the child would still be the most important factor taken into account and decisions would still be made based on the circumstances of each case.

Entrenched conflict can make it very difficult for equal shared parenting to work. It is also not likely to be in the best interests of the child where there is violence or child abuse. For these reasons, the presumption would be against equal shared parental responsibility where there is evidence of violence, child abuse or entrenched conflict. However, this is again a rebuttable presumption – parties would be able to put arguments why there should be equal shared parental responsibility. For the presumption to be against equal shared parental responsibility, the court would need to be satisfied that there is evidence of violence, abuse or entrenched conflict involved in the case – it would not be enough just to make allegations about it.

Family violence and child abuse are already defined within section 60D of the Family Law Act. A definition of entrenched conflict would need to be developed. It would need to include a sense of sustained high level conflict over a significant period.

The alternative to equal shared parental responsibility is not necessarily that one parent has all the responsibility and the other has none. The court would be able to make specific orders concerning the way in which parental responsibility is to be shared. The court would also retain the capacity to make orders about shared parental responsibility in favour of persons other than parents (such as grandparents).

Entrenched conflict will be difficult to define. What factors should be used to identify entrenched conflict?

The requirement to consult

In order to reduce conflict between parents and to provide greater direction to the court, it is proposed that the definition of shared parental responsibility in the Family Law Act include a requirement for parents to consult each other in making key decisions about their children. Consultation does not just mean informing the other parent about a decision that has already been made. The intention is to ensure both parents discuss the issue and, where possible, reach agreement.

Parents will need to consult about the elements of longer term care, welfare and development of the child such as education, religious and cultural upbringing, health, change of surname and usual place of residence. As recommended by the Committee, they will not have to consult on the day to day care of the children. The parenting advisers at the Family Relationship Centres and through the Family Relationship Advice Line could be a source of advice to help parents understand what sort of decisions require the other parent to be consulted.

Where parents do not agree, they will be able to use the Family Relationship Centres or other dispute resolution services to try to resolve the issue. In some cases a deadlock may finally end up being settled by a court.

Equal shared parenting time

The Committee rejected the idea of 50/50 shared custody (that is, equal shared parenting time) as the starting point in family law cases. At paragraph 2.44 of its report the Committee said that

In the end, how much time a child should spend with each parent after separation, should be a decision made, either by parents or by others on their behalf, in the best interests of the child concerned and on the basis of what arrangement works for that family.

However, the Committee did recommend that the court should be required to consider substantially shared parenting time where both parents want to be the primary care giver. The Government agrees that such a provision would give greater encouragement to the parents to consider substantially shared parenting time. Therefore, the Government proposes to amend the Family Law Act to require the court to consider substantially shared parenting time where both parents want half or more of the time with their child – and the case does not involve violence, child abuse or entrenched conflict.

Other amendments would be needed to introduce the requirement proposed on page 3 that advisers, such as lawyers or counsellors, helping parents develop a parenting plan would need to raise with parents the possibility of considering equal parenting time as a starting point.

Compulsory dispute resolution

The Committee recommended that, with some exceptions, parents in dispute over parenting issues should be required to try to resolve their disputes outside the court system before they are able to file in the courts. In response the Government proposes to change the Family Law Act to require parents to attend a dispute resolution process such as counselling, mediation or conciliation, aimed at completing a parenting plan, before they can take a parenting issue to court. The exceptions would be where there is family violence or child abuse.

It is proposed that attendance at a joint dispute resolution session with a parenting adviser at a Family Relationship Centre would meet this requirement but the parents could also use another service or dispute resolution practitioner (such as a private mediator) as long as the provider meets approval standards to be established under the Family Law Act.

To file an application in the courts seeking any orders relating to children (other than consent orders – see page 4), a person would need a certificate from a family relationship centre or another approved service or practitioner saying that the parents have attended a dispute resolution process. If one of the parents refuses or fails to attend, the other parent would be able to get a certificate and take the matter to court anyway. The court would be able to take into account the refusal or failure to attend in considering a possible cost order against the other parent. This is to encourage parents to try to resolve their disputes outside the courts where possible and to discourage parents from trying to avoid that process.

Exceptions would need to be made where there is violence or child abuse involved. In such cases a parent whose spouse has been violent or whose child has been the victim of abuse would be able to take the matter direct to the courts if they wished to do so. Again the courts would be able to impose cost orders against a parent who it finds has falsely alleged violence or child abuse to avoid the dispute resolution process.

Parents who don't want to take a matter to court or who only want to seek consent orders (because they have reached agreement) would not be affected by the requirement to obtain a certificate. It is only those parents who want to file a dispute in the courts who would need to get a certificate to show they have attended a dispute resolution process.

Should there be other exceptions to the requirement to attend a dispute resolution before filing a parenting dispute in the courts?

The introduction of compulsory dispute resolution will increase demand for dispute resolution counselling, mediation and similar services. The Family Relationship Centres will deal with some of the increased demand but they will not be in all locations. Also, some parents will need more or different help than a Family Relationship Centre can provide. Therefore the Government proposes to expand community-based dispute resolution services to support the Government's reforms.

How can we ensure that people in rural and remote parts of Australia are best able to meet the proposed requirement?
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Changes to terms used in the Family Law Act

Changes to the Family Law Act in 1995 adopted the terms ‘residence’ and ‘contact’ instead of ‘custody’ and ‘access’. However, the Committee recommended that more family friendly terms such as ‘parenting time’ be used.

The Government proposes to remove the current categories of ‘residence’, ‘contact’ and ‘specific issues order’ from the Family Law Act and related legislation and instead use ‘parenting order’. That will focus the court and the parties on parenting as the central issue.⁴

Changes to enforcement provisions in the Family Law Act

The new approach to breaches of agreements and court orders, using the Family Relationship Centres and the Contact Orders Program (page 7), will provide a new path for parents when parenting orders are breached by the other parent. As with other parenting disputes, it is proposed that in most cases parents would be required to attend a dispute resolution session at a Family Relationship Centre or other dispute resolution service before they can file in the court for an enforcement order. The same exceptions – cases involving violence or child abuse – would apply.

Should there be other exceptions, such as where there is significant urgency involved in getting the order enforced?

Some cases, either because they fall within these exceptions or alternative processes were unsuccessful, will end up back in court for enforcement of orders. The Government recognises that this is an area of great concern to many people, particularly in relation to breaches of contact orders. In 2000 the Government introduced a three stage parenting compliance regime that had, as one of its objectives, the better enforcement of parenting orders. The most significant change was that courts were given the power to require parents to attend parenting programs to try to better manage their relationships. These changes have not had the impact that the Government had hoped. Further changes appear to be needed.

It is proposed that the Family Law Act be amended to ensure that, where there has been more than one deliberate and intentional breach of orders, the court must consider changing the parenting order in relation to which parent the child lives with and with whom the child spends time. The best interests of the child would still be the most important factor in making a decision.

Are there other changes that could be made to the Family Law Act to help the court deal with breaches of parenting orders?

Provisions from overseas models

The Government looked at a number of models when considering family law reform and deciding to strengthen the objects and principles in the Family Law Act. An example was legislation in the State of Florida in the United States of America. The Florida legislation, in setting out its overarching objective, states that:

⁴ The exception will be ‘child maintenance order’ which will be retained as a specific category.

It is the public policy of this State to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved.

Under the Florida model, the court refers parents to dispute resolution as a first step.

Like the Family Law Act, the Florida legislation lists the factors that the court must take into account when assessing the best interests of a child. Two of the factors in the Florida list that could usefully be adopted in Australia are

- that one parent is more likely to allow the child frequent contact with the other parent, and
- the willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

Should the Government amend the Family Law to include these two provisions as factors that a court would need to consider when deciding what is in the best interests of the child?

What other useful provisions from overseas jurisdictions should be considered?

Proposed implementation of changes to the law

Following consultation on these proposed changes to the law, the Government will finalise the proposals and introduce amending legislation into Parliament. Most can be implemented as soon as they are passed by Parliament. One exception is the introduction of compulsory dispute resolution. To support that reform, the availability of dispute resolution services will be a critical issue. The Family Relationship Centres, when established, will take up much of the demand, but there will also be a need to increase the capacity of other community-based dispute resolution services such as mediation and conciliation. An approval process for dispute resolution practitioners will also need to be put into place to ensure that certificates are only available from practitioners who meet appropriate standards. For these reasons, the introduction of compulsory dispute resolution will need to be later than the introduction of the other changes to the law.

CHANGES TO THE COURTS

While the proposed reforms will help as many families as possible to resolve their differences outside the court system, there will always be some cases where a court does need to make the final decision. For those parents, the Government proposes measures aimed at making the court processes less adversarial where cases involve children and to make system easier to navigate for family law matters.

Less adversarial process in the court

When cases involving parenting issues do go to court, the Government agrees with the Committee that decisions should be ‘...significantly simplified, speedy and low cost.’ People involved in disputes are entitled to achieve a just outcome, as quickly and efficiently as possible. This is never more so than in family law disputes, particularly those where children are involved.

The Government wants to reduce the adversarial nature of court processes for parenting matters as they tend to escalate and prolong disputes.

A range of amendments could be made to the Family Law Act and to family law procedures to help achieve this result. Some of the ideas are being trialled by the Family Court in its Children’s Cases Program in Sydney and Parramatta. Possible measures could include:

- ensuring that the judge or magistrate is responsible for controlling the way the case is run in court
- enabling a judge or magistrate to suspend the formal hearing of a case and instead try to mediate between the parties or help negotiate a settlement between them
- a power to allow the judge to directly seek the views of a child where the judge believes that to be appropriate
- providing that certain rules of evidence do not apply to parenting disputes (the judge or magistrate would have a discretion to apply these rules in certain circumstances, for example where serious allegations are made)
- giving the judge or magistrate the power to determine what witnesses will be called in a matter and what evidence would be admitted and what would not, and
- giving court-based counsellors a greater role during the hearing of a case.

The aim of these changes would be to assist the judge or magistrate to conduct the case in the least adversarial manner possible to identify and resolve the major issues in dispute. Some of these proposals involve important changes to the role of judges, magistrates and court staff and so need careful consideration.

Are there other options for creating a less adversarial approach to resolving disputes in the courts?

A combined registry

The Government proposes to establish a new combined registry for the Family Court of Australia and the Federal Magistrates Court to deal with family law matters that are heard by those courts.⁵ The combined registry would provide information about the two courts and help people navigate the court system.

It would provide registry services to both courts, such as creating and maintaining court files and listing matters for hearing before a judge or magistrate and providing all information technology and human resource management services. Cases would be channelled through the registry to the appropriate court.

The new combined registry would also work closely with Family Relationship Centres and other appropriate dispute resolution services to ensure separating parents have the best possible opportunity to resolve their disputes outside the courts.

What should the combined registry do to make it easier to navigate the family courts system?
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⁵ The Family Court of Western Australia and the Perth Court of Petty Sessions, both of which are State courts, deal with family law disputes in Western Australia. As those courts are the responsibility of the Government of Western Australia, the registry and associated information services are a matter for that State.

COMMUNITY EDUCATION

These major changes to the family law system need to be supported by a community education campaign to:

- explain the changes to the law
- inform parents of their choices and responsibilities
- encourage parents to get help as early as possible when they are experiencing relationship difficulties
- encourage separating parents to use non-adversarial ways of resolving any disputes over parenting arrangements and promote the use of parenting plans
- encourage families to use the Family Relationship Centres as a first port of call when experiencing difficulties or separating, and
- highlight the role of grandparents and encourage grandparents to use the Family Relationship Centres and other services.

It will be important for the campaign to be a continuing one (rather than one-off) if it is to have an impact on parents who separate in future years.

Are there other messages that need to be included?
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CHILD SUPPORT

The Committee made a number of recommendations relating to the child support scheme and that a Taskforce be established to re-evaluate the child support scheme. The Government has established a Child Support Taskforce to report back by March 2005 on a comprehensive re-evaluation of the scheme, including the Committee's recommendation. More information can be found at www.facs.gov.au/childsupportreview.

HAVE YOUR SAY

The Government invites your views on these proposed changes to the family law system.

Comments should be sent to:

Consultation Secretariat
Family Law and Legal Assistance Division
Attorney-General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

Or by email to: consultation@ag.gov.au

The deadline for comments is: 14 January 2005

APPENDIX A

FRAMEWORK STATEMENT ON REFORMS TO THE FAMILY LAW SYSTEM

Issued by the Prime Minister 29 July 2004

In 2003 the House of Representatives Standing Committee on Family and Community Affairs conducted a wide-ranging inquiry into child custody arrangements in the event of family separation. The 1700 submissions that the Committee received demonstrate the significant community concerns about these issues. The government is grateful for the hard work of the Committee on what was a very demanding task.

The Committee's report, *Every Picture Tells A Story*, tabled last December, had a strong focus on the importance of reducing conflict between separated parents and on separated fathers having greater involvement with their children. It emphasised the need for practical steps to reduce parenting disputes.

The government agrees with the Committee on the importance of these issues and on providing opportunities for families to resolve disputes without going to court. It is also important to provide assistance to families to avoid separation by ensuring they have opportunities for pre-marriage education and help in dealing with relationship difficulties along the way. The government proposes to undertake major reforms of the family law system to provide families with better ways to resolve relationship disputes and to reduce the emotional costs to families and children of conflict and separation.

A new family law process

The Committee recommended that a single entry point into the family law system be established to provide information, case assessment, screening and referral of separating parents to mediation and counselling services. The Committee also recommended the establishment of a Families Tribunal to attempt to conciliate disputes and to make decisions in a range of cases.

The government considers that the Committee's objectives can be addressed through a major change to the family law system focusing on resolving disputes outside the courts. The government proposes to establish new Family Relationship Centres across the country to provide information, advice and dispute resolution to help parents reach agreement. This new national service will be a visible entry point to the family law system, providing case assessment, referrals and practical assistance to parents, including help in developing a parenting plan. Centres will screen cases for violence or child abuse and refer such cases to support services and direct to the courts where appropriate.

While the Committee envisaged that the single entry point services would be attached to a government agency, the government considers that the community sector is better placed to provide these services. Information, advice and the first three hours of dispute resolution sessions will be free.

The new Family Relationship Centres will overcome the limitations associated with the Committee's Families Tribunal proposal. Where the Tribunal would have only been able to make determinations in a relatively small proportion of cases, and would have assisted only those couples wishing to proceed to court, the centres will offer practical, early intervention assistance which will be available to all separated families. Through the new centres, couples will be able to access dispute resolution at a much earlier stage in their separation, before conflict has escalated and disputes have become entrenched.

A major cause of conflict between separating parents is the breach of parenting agreements or court orders. The centres will have an important role in helping to deal with such breaches rather than relying on enforcement orders from the courts which often do not resolve the problem. Where a parent contacts a Family Relationship Centre over a breach of an agreement or order, a parenting adviser would contact the other parent and, where practical, set up a meeting with both parents to try to resolve the issue. (In some cases the level of conflict might mean the adviser will need to talk to the parents separately or by telephone only.) Where the efforts of the adviser do not resolve the dispute, the parents could be referred to a service such as the Contact Orders Program which has had significant success in working with families experiencing high conflict that is affecting parenting arrangements. The government proposes to increase significantly the resources of these programs.

The Family Relationship Centres will not just be for separating parents. They will provide information and referral to pre-marriage education services to give couples a sound start to marriage. For families who have not separated but who are experiencing relationship difficulties, the centres will provide information and referral to services that can help to prevent family breakdown. In many cases such services will be available on the same premises.

The government proposes to undertake a tender process to establish 65 Family Relationship Centres around Australia. Like the Job Network, they will be run by a variety of non-government organisations but will be badged as a national service and will provide similar help to families across the country. It is likely that service providers such as Centacare, Relationships Australia and members of Family Services Australia, such as Anglicare, will be among the organisations that deliver these services. The network of centres will be supported by a free telephone advice line for those who are unable to access a Family Relationship Centre in person. An implementation review of the centres will be undertaken after the first year.

One of the objectives of the Committee in recommending the Tribunal was to make family law hearings less adversarial. As part of the new family law process, the government will propose changes to the Family Law Act 1975 to make family law cases relating to children less adversarial and less likely to escalate conflict.

Parents would be able to consult a lawyer if they wished, however, given the Committee's preference for keeping lawyers out of pre-court processes as a means to reduce pressure to adopt a win/lose approach, lawyers would not be allowed to participate in the individual or joint sessions with a parenting adviser. However, parties could bring a non-legal companion if considered appropriate by the mediator.

The government will also establish a new combined registry for family law matters for the Family Court of Australia and the Federal Magistrates Court. The combined registry will help people navigate the court system without the need for a lawyer. It will provide information about the family law courts and channel cases to the appropriate court. Where people come to the courts without attempting dispute resolution first – and the case does not involve violence or child abuse –

the registry will refer them to a Family Relationship Centre or other appropriate dispute resolution service to try to resolve the matter outside the courts.

Sharing parenting

The Committee rejected the idea that equal shared custody should be a starting point under the Family Law Act. However, it did recommend that equal shared parental responsibility be a starting point in most cases. That means parents share the key decisions in a child's life, regardless of how much time the child spends with each parent. The government proposes to amend the objects provisions of the Family Law Act to refer to the need for both parents to have a meaningful involvement in their children's lives and for children to have a right to spend time on a regular basis with both parents. The government also proposes to make equal shared parental responsibility the starting point except in cases involving violence, child abuse and entrenched conflict. Parents will still be able to put their case for a different arrangement - and the courts will continue to consider the best interests of the child as the most important question - but equal shared parental responsibility will be the starting presumption in most cases. In many cases the Courts will have to consider equal parenting time if both parents are seeking to have the child living with them (although not where violence, child abuse or entrenched conflict is involved). The government will also consider implementing useful family law initiatives from other parts of the world.

To better promote shared parenting, the government proposes that counsellors, mediators and legal advisers will be required to inform parents about jointly developing a parenting plan.

When advising on parenting plans they will need to discuss equal shared parenting time as a starting point where practicable.

The Committee also recommended that, except in certain circumstances, parents be required to attempt alternative forms of dispute resolution such as counselling, mediation or conciliation before they can go to court over a parenting matter. The government agrees. Parents will need to attend a dispute resolution process aimed at completing a parenting plan, either at a Family Relationship Centre or elsewhere, before they will be able to file a parenting matter in the courts. Cases involving violence or child abuse will not have to meet this requirement.

In cases where couples are in complete agreement regarding custody and related matters, all that will be required is a brief attendance at a Family Relationship Centre to formalise the details of a parenting plan. Proceedings can then be commenced.

Services to assist shared parenting

The Committee's report highlighted the importance of services that can assist parents who cannot achieve and sustain shared parenting on their own. It recommended the government provide increased resources for family services.

The government agrees. The new approach will require significant expansion of pre-marriage education, early intervention services for families, dispute resolution counselling, mediation and similar services. Some of these resources will be available for the Family Relationship Centres to provide further services. The government will also be expanding the successful Contact Orders Program, Children's Contact Services, Men's Line and the Men and Family Relationships Program.

Help for grandparents

Grandparents play an essential role in children's lives but can feel cut off and helpless when families separate. Many have responsibility for caring for their grandchildren when the parents are unable to do so. Grandparents already have the right to apply for a residence or contact order under the Family Law Act but often are not aware of their rights or simply want to have a role in their grandchildren's lives without taking the matter to court. The government proposes to change the Family Law Act to highlight the role of grandparents and to ensure the role of grandparents is taken into account by the courts. Through a community education campaign, grandparents will be encouraged to use the Family Relationship Centres, dispute resolution services and the new national advice line to obtain information and assistance. The government also proposes additional legal aid resources in recognition of the increased demand as a result of more grandparents exercising their rights. The government is working with the Council of Australian Governments (COAG) to develop a better coordinated approach across jurisdictions to support grandparents who are providing full-time care to their grandchildren. COAG has commissioned the Community and Disability Services Ministers Conference to report to COAG this year on the nature and extent of the needs of grandparent carers and what measures could be taken to address them.

Child Support

The committee recommended a number of changes to child support legislation and a detailed re-evaluation of the Child Support Scheme by a Taskforce. The government recognises that there is considerable interest in the scheme and a strongly held belief in parts of the community that the current system is inequitable. The government is taking immediate steps to establish a Child Support Taskforce to report back by March 2005 on the recommendations of the Committee. This Taskforce could also consider whether there is scope for the Child Support System to encourage couples to enter parenting plans and access the services of the Family Relationship Centres.

Community Education

The Committee recommended a wide-ranging, long term and multi-level community education strategy to support legislative changes and to promote shared parenting. The government will implement on-going community education to explain the changes to the law, encourage a non-adversarial approach to family separation and to encourage parents to get early help. It will include information on the role of grandparents, as recommended by the Committee.

Implementation

The government is committed to improving outcomes for separating families and ensuring that the focus is on the best interests of the children involved. These proposed reforms will significantly change the family law system and enable many more families to resolve disputes outside the courts. However such far-reaching changes need to be implemented carefully and through consultation with the community. For this reason the government will be releasing a discussion paper on the implementation of the proposed reforms and seeking input from the community on how they should be taken forward.